



STATE OF CONNECTICUT

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To: Senate Co-Chair Eric Coleman
House Co-Chair Gerald Fox
Senate Ranking Member John Kissel
House Ranking Member John Hetherington
Honorable Members of the Judiciary Committee

From: Paul J. Knierim
Probate Court Administrator

Re: RB 309 An Act Concerning Probate Court Operations

Date: March 5, 2012

Thank you for the opportunity to testify in support of Raised Bill 309, which the Office of the Probate Court Administrator and the Probate Assembly jointly support. The bill before you deals with a number of operational and technical matters concerning the probate courts and probate law.

Sections 1 through 4 make clarifying changes concerning probate judges' retirement benefits. The General Assembly has previously authorized the appointment of administrative judges for the regional children's probate courts and special assignment probate judges. Judges serving in those capacities are entitled to additional compensation under existing law. While the Comptroller's office has included the additional compensation in the pension contribution and benefit calculations, there is some ambiguity in the statutes. Sections 1 through 4 will clarify that the calculations of judges' retirement benefits, and their contributions to the retirement system, properly include any additional compensation received as administrative judge or special assignment probate judge. The intent is that this change would have retroactive effect, since it memorializes current practice.

To improve the clarity of the proposed changes, we recommend that subsection (2) of section 1 of the bill be edited slightly in accordance with the attached proposed substitute language.

A second revision related to the probate pension system, which would amend § 45a-43(b), is also attached. This proposal, which is also intended to clarify the existing statute, establishes that the surviving spouse of a judge who dies while in office but who is eligible to retire at the time of death is entitled to the pre-retirement death benefit established under that statute.

Section 5 is a technical provision that would conform the state's procedure for resolving disputes related to health insurance benefits for retirees to the new requirements of federal law. In response to federal legislation, the Insurance Department has developed a process for resolution of health care disputes. The proposed change will enable retired probate judges and employees to use this new state process rather than appealing to the State Retirement Commission.

Section 6 would authorize the Office of the Probate Court Administrator to publish biennial, rather than an annual, reports. It will also shift the reporting period to the fiscal year rather than a calendar year. The change will reduce expense by reducing the frequency of our reporting.

Section 7 is technical correction to clarify the method of determining probate fees in connection with the estates of non-residents.

Sections 8 and 9 will enable probate courts to transfer certain children's matters to a regional children's probate court or to Superior Court Juvenile Matters on the court's own motion. The change will move the system towards the eventual goal of having all 54 probate districts benefit from the specialized services of the children's courts.

Section 10 deals with the activities of probate court officers (PCO's) in the children's courts. PCO's, who have specialized training in social work and family therapy, serve a vital role in the operation of the children's courts. Working together with families, they assess the needs of children and their families, assist in developing family plans for the care of children, and connect families with available services. The bill would define the role of PCOs at the children's courts and make their written reports admissible in evidence.

Sections 11 through 13 make minor changes to legislation passed last session establishing the role of temporary administrator for the limited purpose of investigating a potential cause of action. A temporary administrator appointed under the new provision has no authority over assets of the estate but is able to obtain medical and financial records. Unfortunately, the use of the term temporary administrator has caused some confusion because temporary administrators acting under pre-existing law typically have authority over estate

assets. To eliminate this confusion, we suggest renaming the role to "estate examiner" and moving the governing provisions to a new and separate statute. All other provisions relating to the role would be unchanged.

Section 14 will ensure that persons with intellectual disability have the benefit of strong advocacy by their attorneys in probate court proceedings. The bill would eliminate the requirement that an attorney file a report in connection with triennial guardianship reviews. These reports essentially require the attorney to adopt a guardian ad litem role, which is inconsistent with a lawyer's obligation to advocate for the client's position whether or not the attorney believes the position to be in the client's best interests. The report would be replaced with a statement by which the attorney would confirm that he or she met with the client and indicate whether a hearing is requested. This approach parallels the recent changes in the conservatorship statute.

Sections 15 and 16 seek to streamline service of process on an out-of-state fiduciary. Under existing law, a non-resident fiduciary is served by leaving a copy of the process with the judge of probate. This amendment would allow service to be made by leaving a copy of the process at the court, thus enabling service to be effected even when the judge is conducting a hearing or not present at the court.

Lastly, we request the opportunity to submit additional language that would clarify the respective roles of the State Library and the Probate Court Administrator in the management of probate records. We are presently finalizing language with the State Librarian and the Public Records Administrator that would embody the longstanding partnership between the agencies in the preservation of probate records while establishing that the responsibility for promulgating specific policies rests with probate administration.

On behalf of the probate court system, we urge the committee to favorably act on the bill. Thank you for your consideration.

Substitute language for RB 309 AAC Probate Court Operations

Amend section 1 of RB 309, lines 19 through 31, as follows:

19 (2) "Credited service" means (A) all periods during which a person
20 held the office of judge of probate and any period of service elected
21 by a judge pursuant to section 45a-36a, and (B) any period of service as
22 an administrative judge for a regional children's probate court after
23 such judge ceases to serve as a probate judge, provided such
24 administrative judge works as an administrative judge at least one
25 thousand hours per year, or [(B) any period] (C) all periods during which
26 a person served as an employee of any probate court, or [(C)] (D) subject to
27 the requirements of subsections (a) and (b) of section 45a-54, a period
28 of not more than three years for service as a member of the General
29 Assembly and military service, or [(D)] (E) the aggregate of any periods of
30 service provided for in subparagraphs (A), (B), [and] (C) and (D) of
31 this subsection;

Add new section as follows:

(NEW) Subsection (b) of section 45a-43 of the general statutes is repealed and the following substituted in lieu thereof (*Effective upon passage*):

(b) Except as provided in subsection (c) of this section, if any member who is survived by a spouse has not exercised his option under subsection (a) of this section dies after January 1, 1968, and before having elected retirement or before his retirement income payments begin, but after [completion of the age and service] satisfying the requirements of sections 45a-36 through 45a-39, inclusive, that would permit him to retire on his own application, [and he is survived by a spouse,] a retirement income shall be paid monthly to his spouse, commencing at his death and ending upon the death of the spouse. The amount payable shall be the average of (1) fifty per cent of the retirement allowance payable to the member for his lifetime if no payments were to continue after the member's death and (2) fifty per cent of the reduced retirement allowance that such member would have received if he had retired on the date of his death with the provision that after his death his spouse would receive one-half of the amount payable to the member.